

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

THE VACCINE CENTER, LLC,

Plaintiff(s),

vs.

GLAXOSMITHKLINE LLC,

Defendant(s).

Case No. 2:12-cv-01849-JCM-NJK

ORDER DENYING MOTION TO
DISQUALIFY COUNSEL
(Docket No. 84)

Pending before the Court is Plaintiff's motion to disqualify Greenberg Traurig as counsel for Defendant Apexus, Inc. ("Defendant"). Docket No. 84. Defendant filed a response and Plaintiff filed a reply. Docket Nos. 87, 89. Per the Court's request, the parties also filed supplemental briefing. Docket Nos. 94, 95. The motion came on for hearing on April 25, 2013.¹ For the reasons stated below, the motion is hereby **DENIED**.

Attorneys practicing in this Court must comply with the Model Rules of Professional Conduct as adopted by the Supreme Court of Nevada, unless modified by this Court. *See* Local Rule IA 10-7. Plaintiff asserts that Greenberg Traurig violated its ethical duty owed to a prospective

¹ A written transcript of the hearing is not currently available. Citations to the hearing will refer to the audio recording of the hearing and to the time of day when the statements were made.

1 client pursuant to the Nevada Rules of Professional Conduct,² which generally prohibit attorneys
 2 from representing a party adverse to a former prospective client in the same or substantially related
 3 matter if the lawyer received information from the prospective client that could be significantly
 4 harmful to that party in the matter. Nev. R. Prof. Conduct 1.18(c).

5 Even where the elements of Rule 1.18(c) are met, however, disqualification is not automatic.
 6 Instead, the rule provides an exception where (1) the lawyer who received such information took
 7 reasonable measures to avoid exposure to more disqualifying information than was reasonably
 8 necessary to determine whether to represent the prospective client; (2) that lawyer is timely screened
 9 from participating in the matter; (3) that lawyer is not apportioned any fee therefrom; and (4) written
 10 notice is promptly given to the prospective client. *See* Nev. R. Prof. Conduct 1.18(d)(2).³ Because
 11 the Court finds the exception outlined in Rule 1.18(d)(2) applies in this case, it concludes that
 12 Greenberg Traurig is not disqualified from representing Defendant regardless of whether the
 13 elements of Rule 1.18(c) are satisfied.⁴

14 First, Mr. Chansky took reasonable measures to avoid exposure to more disqualifying
 15 information than was reasonably necessary to determine whether to represent the prospective client.
 16 It is undisputed that Mr. Chansky made clear from the outset that Greenberg Traurig does not
 17 generally take cases on a contingency basis, but would review “any material or documents you may
 18 have in order to assess whether the case would be economically viable as a contingent matter.” *See*
 19 Mot. Exh. 1; *see also* Baktari Decl. ¶ 8 (“Mr. Chansky explained to me that [Greenberg Traurig]

21 ² The pending motion arises out of Dr. Baktari’s (Medical Director for the Vaccine Center)
 22 consultation with Edward Chansky, Esq., at Greenberg Traurig about the possibility of representing
 23 Plaintiff in this case. *See, e.g.*, Baktari Decl. ¶ 8.

24 ³ The parties represent that no court has analyzed Nevada’s Rule 1.18. The parties do, however,
 25 cite to a case applying this exception, *Beckenstein Enterprises-Prestige Park, LLC v. Lichtenstein*, 2004
 26 WL 1966863 (Conn. Super. Aug. 11, 2004). The rule analyzed in that case mirrors the language of Rule
 27 1.18 in relevant part. *See id.* at *4 n. 6. The Court finds the analysis provided in *Beckenstein* instructive
 28 here.

⁴ Since the Court has found that Greenberg Traurig fully complied with Rule 1.18(d)(2), the
 Court makes no findings regarding the elements of Rule 1.18(c).

1 does not typically handle cases on a contingency basis, and he asked me to provide additional
2 materials and information to help him determine whether to make an exception for The Vaccine
3 Center's case"). Plaintiff is a sophisticated client knowledgeable about the law and very involved in
4 this case. *See* Hearing Tr. at 10:20-10:21. Moreover, as Plaintiff's counsel made clear numerous
5 times at the hearing, a lawyer's determination whether to take a plaintiff's complex antitrust suit on
6 a contingency basis requires a thorough analysis and understanding of liability and damages issues
7 because the attorney must weigh the significant amount of money and time that will be invested in
8 representing the plaintiff with the ultimate likelihood of prevailing and recovering damages. *See*
9 Hearing Tr. at 10:15-10:16; 10:30-10:31; *see also Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 558
10 (2007) (noting the "unusually high" cost of conducting discovery in antitrust cases). Thus, the
11 information that Mr. Chansky obtained from Dr. Baktari was reasonably necessary for Greenberg
12 Traurig to determine whether to take the case. *Cf. Beckenstein*, 2004 WL 1966863, at * 6 (in
13 significantly less complex case, finding that attorney and prospective client properly "discuss[ed]
14 the merits of their legal claims and possible defenses"). In sum, Mr. Chansky obtained materials
15 from a sophisticated prospective client that Greenberg Traurig needed to determine whether to take
16 on Plaintiff's case and, at the same time, Mr. Chansky made clear to Plaintiff that there was a
17 significant possibility that Greenberg Traurig would not ultimately take the case. Under the
18 circumstances of this case, the Court finds these to be reasonable measures to avoid exposure to
19 more disqualifying information than was reasonably necessary for Greenberg Traurig to determine
20 whether to represent Plaintiff.

21 Second, Mr. Chansky and the two other lawyers at Greenberg Traurig who had contact with
22 Dr. Baktari were screened from this matter promptly upon Plaintiff's notification to Greenberg
23 Traurig of the possible violation of Rule 1.18. *See* Andrews Decl. ¶¶ 9, 10.⁵ This was timely under
24

25 ⁵ At the hearing, Plaintiff's counsel referenced "Nevada case law" cautioning against allowing
26 the screening of attorneys who work in the same office as disqualified attorneys, Hearing Tr. at 10:26-
27 10:28, but he actually quoted from a case analyzing California ethical rules. *See Laryngeal Mask Co. v.*
28 *Ambu A/S*, 2008 WL 558561 (S.D. Cal. Feb. 25, 2008). At the time of that ruling, it appeared that
California did not allow screening of any kind. *See id.* at *7 ("California courts do not use ethical
screens to prevent disqualification from being imputed to members of firm"). The court further opined

1 the circumstances. *See Beckenstein*, 2004 WL 1966863, at *6 (finding screening timely where
2 disqualified attorney was screened “[a]s soon as he was notified by plaintiffs’ counsel of [the
3 disqualified attorney’s] discussion with [the plaintiff]”).

4 Third, Mr. Chansky and the two other lawyers at Greenberg Traurig will not be apportioned
5 fees from this matter. *See Andrews Decl.* ¶ 6.

6 Fourth, and lastly, upon receiving notice from Plaintiff of the potential conflict, Greenberg
7 Traurig promptly investigated the conflict and provided written notice to Plaintiff roughly ten days
8 later. *See Andrews Decl.* ¶¶ 9, 11. This constitutes prompt written notice. *See Beckenstein*, 2004
9 WL 1966863, at *6 (finding prompt notice given where provided 30 days after lawyer was informed
10 of the possible conflict).

11 Accordingly, even if the elements of Rule 1.18(c) could be satisfied here, Greenberg Traurig
12 qualifies for the exception provided in Rule 1.18(d)(2). As such, Plaintiff’s motion to disqualify is
13 hereby **DENIED**.

14 IT IS SO ORDERED.

15 DATED: April 25, 2013

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17 
18 NANCY J. KOPPE
19 United States Magistrate Judge
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25 that even if screening were generally allowed, it would not allow screening in instances where the
26 attorneys worked in the same office while representing the opposing party in the same litigation. *Id.*

27 Unlike the situation in *Loryngeal*, however, Nevada has adopted Rule 1.18(d)(2) to expressly
28 provide an exception to disqualification in the same matter based on the screening of the disqualified
attorneys. The Court discerns no exception to the exception in Rule 1.18(d)(2) for instances where the
disqualified attorney is in the same office as the attorneys currently practicing in the case before the
Court.